IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.190 OF 2005

Usman Kamar Hussain Khan @ Ritu ...Applicant

Versus

The State of Maharashtra ...Respondent

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Ms.Rainu Bhatt for Applicant.

Mr.R.Y.Mirza, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 1, 2005.

P.C.

1. Heard Counsel for the parties. Perused the record.

2. The Applicant has been arrested in connection with offence registered as C.R.No.539 of 1999 with Bandra Police Station punishable under Section 307 read with Section 34 of the Indian Penal Code and Sections 3, 5 and 25 of the Indian Arms Act.

3. The prosecution case is that an attempt to kill the complainant was made by the accused party, but he survived that attack, as the shot was misfired. The assailants at the relevant time, are stated to be co-accused. The Applicant has been named along with the co-accused who have already been tried and convicted by the Trial Court for the alleged offence, merely on the basis that the sim card used in the mobile phone, which was recovered from the co-accused, was purchased by the Applicant. In addition, the prosecution is relying on the circumstance that the Applicant stayed in a hotel along with the co-accused during the relevant time. It is common ground that no recovery has been made from the Applicant. Indeed, the Applicant has been identified by the prosecution witnesses for the limited purpose to indicate that he had purchased the sim card, which was used in the mobile phone recovered from the co-accused. There is, however, no evidence on record to even remotely suggest that the Applicant participated at the time of the assault, which took place on 14th December 1999. Merely because the Applicant was

seen in the company of the co-accused before or after the assault or stayed with them in the same hotel, does not take the matter any further, as the Applicant is charged only with offence under Section 307 read with Section 34 of the Indian Penal Code. If it is so, the Applicant deserves to be enlarged on bail in relation to the present offence on the following conditions :

(a) The Applicant is enlarged on bail in connection with C.R.No.539/99 registered with Bandra Police Station on executing personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with two local sureties in the like amount.

(b) The Applicant shall regularly report to the nearest Police Station, where he is presently residing, once in fortnight between 10.00 a.m. and 1.00 p.m. and report compliance to the Investigating Officer as well as the Trial Court.

(c) The Applicant shall not leave the jurisdiction of the nearest Police Station, without prior intimation to the Investigating Officer, the

Trial Court and the concerned nearest Police Station.

(d) The Applicant shall not influence the prosecution witnesses or tamper with the prosecution evidence in any manner whatsoever.

(e) The Applicant shall extend full co-operation to the Trial Court for early disposal of the trial and if the Trial Court is of the opinion that the Applicant is responsible for the delay of the trial, that fact be recorded in the Roznama, which will be a ground for cancellation of bail.

4. It is made clear that the Trial Court shall decide the case on its own merits on the basis of the evidence adduced before it, uninfluenced by any observations made in this order.

5. Application disposed of on the above terms.

A.M.KHANWILKAR, J.